DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 03-0076
Indiana Sales and Use Tax
For 1999, 2000, and 2001

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ISSUE

I. **Leased Automobiles** – Sales and Use Tax.

Authority: IC 6-2.5-2-1; IC 6-2.5-3-2; IC 6-18-2-1(a); Hi-Way Dispatch, Inc. v. Indiana Dept. of State Revenue, 756 N.E.2d 587 (Ind. Tax Ct. 2001); 45 IAC 2.2-3-5(b); 45 IAC 2.2-4-27(a); 45 IAC 2.2-4-27(b); 45 IAC 2.2-4-27(c); Black's Law Dictionary (7th ed. 1999).

Taxpayer argues that it was not required to collect Indiana sales tax at the time it leased cars to Indiana residents.

STATEMENT OF FACTS

Taxpayer is an out-of-state automobile dealer. Taxpayer sells used cars and also leases used cars. The vehicles are leased to both Indiana and out-of-state residents. Taxpayer retains the leases during the life-time of the agreements. Taxpayer states that before 1999, it was unaware that it was required to collect Indiana sales tax for lease transactions made with Indiana residents. After 1999, taxpayer registered to collect Indiana sales tax. However, taxpayer did not collect sales tax from all Indiana lessees. In some instances, the Indiana lessees apparently chose to register their vehicles in taxpayer's home state. In those instances, the taxpayer collected that home state's sales tax.

The Indiana Department of Revenue conducted a review of taxpayer's business records and concluded that taxpayer should have been collecting sales tax on lease payments received from Indiana residents. Taxpayer disagreed with this conclusion, submitted a protest to that effect, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings results.

DISCUSSION

I. **Leased Automobiles** – Sales and Use Tax.

The issue is whether taxpayer should have been collecting sales on vehicles purchased by Indiana residents but which were purportedly registered at the out-of-state location. In addition,

the issue is whether taxpayer should be assessed additional sales tax on leases entered into with Indiana residents before the time taxpayer registered with Indiana to collect the tax.

Taxpayer also sets out a secondary argument. Taxpayer maintains that officials with both the Indiana Motor Vehicle Department and the Department of Revenue (Department) misinformed the taxpayer leading it to believe that it was not required to collect sales tax on leases with Indiana residents when those vehicles were registered at the out-of-state location.

A. Automobile Leases.

Indiana imposes a sales tax on retail transactions, IC 6-2.5-2-1, and a complementary use tax on tangible personal property that is stored, used, or consumed within the state. IC 6-2.5-3-2.

The regulation states that money received from leasing automobiles is subject to sales tax. "In general, the gross receipts from renting or leasing tangible personal property are taxable." 45 IAC 2.2-4-27(a). For purposes of determining the applicability of the tax, the lessor is designated as a "retail merchant," and the lease arrangement is designated as a "retail transaction." 45 IAC 2.2-4-27(b). In addition, the regulation makes no distinction between in-state and out-of-state lessors. "Every person engaged in the business of the rental or leasing of tangible personal property . . . shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing." Id. The in-state or out-of-state lessor is specifically charged with the responsibility of collecting the use tax. "The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana." 45 IAC 2.2-4-27(c).

Therefore, because taxpayer was leasing vehicles to Indiana residents, taxpayer was a "retail merchant" engaging in "retail transactions" and had the responsibility of collecting Indiana sales tax. "The sale of any vehicle required to be licensed by the state for highway use in Indiana shall constitute selling at retail and shall be subject to the sales or use tax unless such purchaser is entitled to one of more . . . exemption[]." 45 IAC 2.2-3-5(b).

IC 6-18-2-1(a) requires that all Indiana residents – with certain limited exceptions – must register their vehicles with this state. "Within sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by the person that (1) are subject to the motor vehicle excise tax under IC 6-6-5; and (2) will be operated in Indiana." Therefore, when the taxpayer leases a car to an Indiana resident – and the vehicle is used in this state – the taxpayer must collect the sales tax on the lease payments. The only possible exception would be under a set of circumstances in which the Indiana lessee leases a vehicle that is not used in Indiana and is not subject to the state's motor vehicle excise tax.

B. Equitable Estoppel.

Nonetheless, taxpayer argues that the additional assessment of previously uncollected sales tax cannot stand because taxpayer – with the best of intentions – relied to his detriment on the erroneous advice provided by both the Department and the Indiana Bureau of Motor Vehicles.

According to taxpayer, it consulted with nearby state officials who advised taxpayer that – as an out-of-state business – it was not necessary to collect sales tax. In addition, taxpayer was purportedly informed that it was unnecessary to collect sales tax from Indiana residents when the subject vehicles were licensed outside
Indiana. In effect, taxpayer is setting out an equitable estoppel argument; because the taxpayer depended on the state to provide correct sales tax information and to clarify any incorrect information, the Department may not now belatedly require that taxpayer pay previously uncollected sales tax.

Equitable estoppel is a defensive doctrine which "prevents one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way . . . ." Black's Law Dictionary 571 (7th ed. 1999). Taxpayer argues that the Indiana officials induced taxpayer into believing it was not necessary to collect sales tax from Indiana residents. Taxpayer maintains that, after having relied upon repeated statements of qualified state representatives, the Department may not afterwards back-track on its position to the taxpayer's detriment.

"Equitable estoppel cannot ordinarily be applied against government entities." Hi-Way Dispatch, Inc. v. Indiana Dept. of State Revenue, 756 N.E.2d 587, 598 (Ind. Tax Ct. 2001). However, application of the doctrine against a government entity is not absolutely prohibited. Id. The exception to this general rule is where "the public interest would be threatened by the government's conduct." Id.

Even accepting taxpayer's assertion – that it relied on incorrect guidance from both the Department and the Indiana Bureau of Motor Vehicles to its detriment – the Department does not conclude that the incorrect advice ever threatened the public's interest. Taxpayer may indeed have relied in good faith upon the incorrect advice offered by state officials; nonetheless, the Department is in no position to abate the sales tax assessment on the ground that taxpayer received misleading or incorrect information.

FINDING

Taxpayer's protest is respectfully denied.

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